

**MARKET CONDUCT EXAMINATION REPORT**

**of**

**THE AMERICAN PROGRESSIVE LIFE & HEALTH  
INSURANCE COMPANY OF NEW YORK**

**of**

**RYE BROOK, NEW YORK**

**As of**

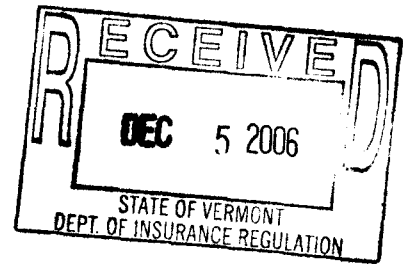
**June 1, 2005**

**By**

**VERMONT DEPARTMENT OF BANKING,  
INSURANCE, SECURITIES AND HEALTH CARE  
ADMINISTRATION**

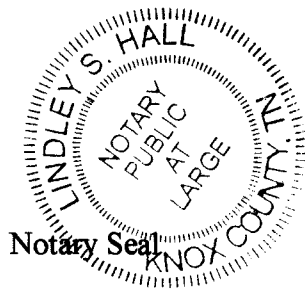


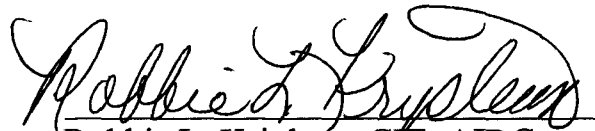
## CERTIFICATION



James R. Montgomery III, AIE, FLMI, MAAA, Robbie L. Kriplean, CIE, AIRC and Jennifer E. Greenway, AIRC participated in this examination.

I, Robbie L. Kriplean, being duly sworn, do hereby affirm that the foregoing report of the Market Conduct Examination of The American Progressive Life & Health Insurance Company of New York is true and correct to the best of my knowledge and belief.



  
Robbie L. Kriplean, CIE, AIRC

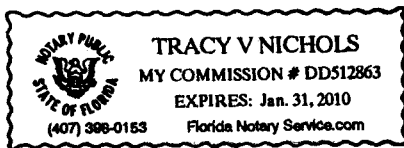
Subscribed and sworn to before me this 30<sup>th</sup> day of November, 2006.

  
NOTARY PUBLIC

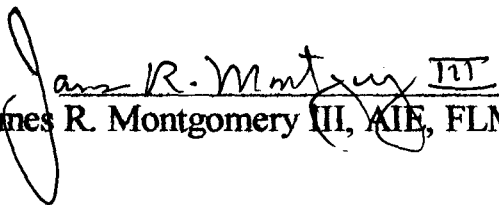
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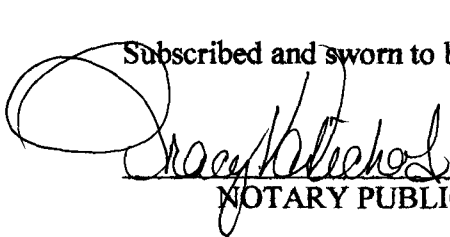
I, James R. Montgomery III, being duly sworn, do hereby affirm that the foregoing report of the Market Conduct Examination of The American Progressive Life & Health Insurance Company of New York is true and correct to the best of my knowledge and belief.



Notary Seal

  
James R. Montgomery III, AIE, FLMI

Subscribed and sworn to before me this 30<sup>th</sup> day of November, 2006.

  
NOTARY PUBLIC

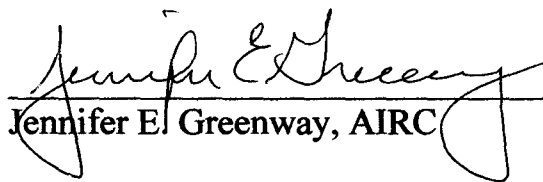
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## CERTIFICATION

James R. Montgomery III, AIE, FLMI, MAAA, Robbie L. Kriplean, CIE, AIRC and Jennifer E. Greenway, AIRC participated in this examination.

I, Jennifer E. Greenway, being duly sworn, do hereby affirm that the foregoing report of the Market Conduct Examination of The American Progressive Life & Health Insurance Company of New York is true and correct to the best of my knowledge and belief.

 AIRC  
Jennifer E. Greenway, AIRC

Notary Seal

Subscribed and sworn to before me this 1<sup>st</sup> day of December, 2006.

  
NOTARY PUBLIC

My Commission Expires January 31, 2008

November 30, 2006

The Honorable John Crowley  
Commissioner  
Vermont Department of Banking, Insurance,  
Securities and Health Care Administration  
89 Main Street, Drawer 20  
Montpelier, Vermont 05620

Dear Commissioner Crowley:

Pursuant to your instructions and in compliance with the provisions of 8 V.S.A. § 3565 et seq. and procedures promulgated by the National Association of Insurance Commissioners, an examination of the market conduct activities has been conducted of:

The American Progressive Life and Health Insurance Company of New  
York, NAIC # 80624

Mail Address:  
P. O. Box 958465  
Lake Mary, FL 32795-8465

Statutory Home Office:  
6 International Drive, Suite 190  
Rye Brook, NY 10573-1068

Main Administrative Office:  
6 International Drive, Suite 190  
Rye Brook, NY 10573-1068

The report thereon, as of June 1, 2005, is respectfully submitted.

## FOREWORD

This target market conduct examination report is written generally by exception and references to additional practices, procedures and files subject to review during the examination were omitted from the report if no improprieties were observed. Failure to comment on specific products, procedures, or files does not constitute approval thereof by the Vermont Department of Insurance.

The American Progressive Life and Health Insurance Company of New York is referred to throughout this report as the *Company* or *American Progressive*, unless specifically mentioned by name. The Vermont Department of Banking, Insurance, Securities and Health Care Administration is referred to as the *Department* or the *Vermont Department*.

The Company's responses, with respect to the findings of this examination, will be made available upon written request to the Vermont Department.

The examiners wish to acknowledge the cooperation of the Company's Vice President, John T. Mackin, Jr. and Assistant Vice President, Brian R. Jacobs, in facilitating the examination process.

## **SCOPE OF EXAMINATION**

### **EXAMINATION AUTHORITY**

The examination of American Progressive was conducted pursuant to applicable Vermont statutes and regulations.

### **TIME FRAME**

The examination generally covers the period from January 1, 2002 through June 1, 2005.

### **SAMPLING METHODOLOGY**

The examiners used random sampling techniques, utilizing ACL software.

### **EXAMINATION SITUS**

The Company's statutory home office is located at 6 International Drive, Suite 190, Rye Brook, NY; however, this examination was conducted entirely off-site. Information, documents and other materials were provided directly to the examiners in hard copy and/or on computer diskettes and by electronic mail.

### **MATTERS EXAMINED**

- Replacement Procedures
- Complaints
- Trade Practices

## **PREVIOUS EXAMINATIONS**

### **PRIOR REPORT SUMMARY AND CONCLUSIONS**

The Vermont Department did not conduct an examination of the Company during the last five years.

## EXECUTIVE SUMMARY

### **Replacements**

The Company was found to be noncompliant with the requirements of Vermont's Life Insurance and Annuities Replacement Regulation, I-2001-3 as summarized below.

The Company failed to inform its producers of the requirements of Vermont's replacement regulation and to incorporate the requirements of the regulation into its producer training manuals, violating Regulation 2001-3 § 4 A. (1). Additionally, the Company failed to implement procedures to confirm that the requirements of the regulation have been met in violation of Regulation 2001-3 § 4 A. (4).

The Company failed in every case to require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts, in violation of Regulation 2001-3 § 4 C.

The Company failed in every case, where a replacement was involved, to provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid, in violation of Regulation 2001-3 § 5 A. (4).

The Company failed in every case, where a replacement was involved, to provide a signed statement identifying any preprinted or electronically presented company approved sales materials used as required by 2001-3 § 3 E. or a statement that the producer used only company approved sales materials (Reference 2001-3 § 5 C. (1)).

The Company failed in every case, where a replacement was involved, to verify that the required forms were received and in compliance with Regulation 2001-3 § 5 A. (1).

Numerous additional violations of Regulation I-2001-3 were observed and are discussed in the section of this report entitled **(I) REPLACEMENTS**.

Additional violations and irregularities were noted with respect to the completion of applications and replacement notices which are detailed in the referenced section of this report.

It was determined that the *Supplement to Application* form, which is used in connection with the Company's Medicare Supplement policy, was found to be noncompliant with the requirements of Regulation 2001-3 § 4 C. Additionally, the *Certificate of Acceptance* form, also part of the Medicare Supplement policy's application package, appeared to serve as an application for life insurance and as such should have been filed with and approved by the Department, pursuant to 8 V.S.A. § 3541. The Company stated that they

would revise the *Supplement to Application* form and would seek approval of the *Certificate of Acceptance* form.

After reviewing the examiners' criticisms the Company reported to the examiners in June 2006, that they made the decision to no longer accept life and annuity replacements effective March 1, 2006, in all states except New York and Pennsylvania.

Numerous recommendations regarding the Company's failure to act in accordance with Vermont's replacement regulation are contained within the text of this report as well as in the **Summary of Recommendations**.

### **Trade Practices**

This section of the report contains a discussion and recommendation with respect to suitability issues regarding the Company's guidelines and use of suitability worksheets designed to be used with its annuity products.

The examiners observed that the Company used a brochure advertising *Tax Deferred Fixed Annuities*, which was found to contain misleading statements and illustrations, representing a violation of 8 V.S.A. § 4724 (2).

The Company allowed the use of an improper question regarding HIV related testing that was contrary to 8 V.S.A. § 4724 (20) (A). The Company agreed with the examiners' criticism by taking corrective action and revising the form.

### **Complaints**

The Company failed to furnish the required annual reports to the Department for the years 2002 through 2005, in violation of Regulation 76-1 § 5.

The examiners observed one (1) instance where the Company failed to respond to an inquiry from the Vermont Department within the fifteen (15) working days time limit, in violation of Regulation 79-2 § 5 C.

### **Reports of Legal Actions Involving Other Insurance Departments**

The Company failed to file the required notices, per Bulletin 30, for the years 2003 through 2005 with the Vermont Department.

## COMPANY PROFILE

### HISTORY

American Progressive Life and Health Insurance Company of New York (American Progressive) is a wholly-owned subsidiary of the American Exchange Life Insurance Company, the insurance holding company of the ultimate parent, Universal American Financial Corporation. American Progressive was incorporated under the laws of the State of New York as a for-profit health insurance company on September 22, 1945 under the name American Progressive Health Insurance Company of New York and commenced business on March 26, 1946. Its charter was amended on January 25, 1979 to include the writing of life insurance and annuities. The Company's present name was adopted at that time.

American Progressive is licensed in 23 states and the District of Columbia.

### STATUTORY HOME OFFICE

6 International Drive, Suite 190  
Rye Brook, New York, 10573-1068

### MAIN ADMINISTRATIVE OFFICE

6 International Drive, Suite 190  
Rye Brook, New York, 10573-1068

#### Note:

The examination's coordinator, John T. Mackin's mailing address is:  
1001 Heathrow Park Lane  
Lake Mary, FL 32746

### VERMONT REPORTED PREMIUMS

Direct written premiums in Vermont for the years indicated are as follows:

	2002	2003	2004	2005
<b>Ordinary Life</b>	\$19,013	\$45,681	\$68,662	\$81,455
<b>Individual Annuities</b>	\$131,000	\$430,157	\$205,246	\$117,018
<b>Accident &amp; Health</b>	\$1,657,201	\$3,154,028	\$3,704,183	3,694,383
<b>Totals</b>	\$1,807,214	\$3,629,866	\$3,978,091	\$3,892,856

## **(I) REPLACEMENTS**

The Company was found to be noncompliant with the requirements of Vermont's Life Insurance and Annuities Replacement Regulation, I-2001-3.

The examiners reviewed the Company's entire book of business written during the examination period. The Company reported that one hundred ninety-two (192) life insurance policies were issued during the period, which included twenty (20) replacements. Twenty-three (23) annuity contracts were issued during the period, of which seven (7), were reported by the Company to be replacements.

The most egregious violations of the regulation are discussed below:

### **(A) 2001-3 § 4 A. (1) & (4)**

The Company failed to inform its producers of the requirements of Vermont's Life Insurance and Annuities Replacement Regulation I-2001-3 and to incorporate the requirements of the regulation *into all relevant producer training manuals prepared by the insurer*, in violation of Regulation 2001-3 § 4 A. (1). The examiners' review of the Company's producer training materials, provided in response to the Preliminary Data Request, revealed that the Company failed to comply with the referenced regulation in that the training materials presented to its producers did not include information of any type with regard to the requirements of Vermont's Life Insurance and Annuities Replacement Regulation I- 2001-3.

Additionally, the Company failed to implement *procedures to confirm that the requirements of this regulation have been met*, in violation of Regulation 2001-3 § 4 A. (4).

### **(B) 2001-3 § 4 C.**

The Company failed in every case to require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts, in violation of Regulation 2001-3 § 4 C.

### **(C ) 2001-3 § 5 A. (4)**

The Company failed in every case, where a replacement was involved, to provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid, in violation of Regulation 2001-3 § 5 A. (4).

The examiners issued various criticisms to the Company with respect to their failure to provide the required notice. Initially, the Company's response was: *Notification of the 30 day right to examine will be given to the applicant at the time the application is completed.* (Emphasis added)

In a subsequent inquiry the examiners requested the date the Company implemented the use of the required notice and a copy of the proposed thirty (30) day notice. The Company's response to the examiners' request was: *Effective March 1, 2006, the Company no longer accepts replacement business. As replacement business is no longer accepted, the notice was not implemented.* (Emphasis added)

**(D) 2001-3 § 3 E. & 2001-3 § 5 C. (1)**

The Company failed in every case, where a replacement was involved, to provide a signed statement identifying any preprinted or electronically presented company approved sales materials used as required by 2001-3 § 3 E. or a statement that the producer used only company approved sales materials (Reference 2001-3 § 5 C. (1)).

**(E) 2001-3 § 5 A. (1)**

The Company failed in every case, where a replacement was involved, to; *verify that the required forms are received and are in compliance with this regulation* pursuant to Regulation 2001-3 § 5 A. (1).

- The following subsections discuss additional irregularities and violations of Regulation I-2001-3.

**(F) 2001-3 § 4 B.**

Regulation 2001-3 § 4 B. requires insurers to implement procedures that will enable monitoring of each of its *producers' life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Department*..... The specifics of those records, which are required to be produced upon request, are contained in 2001-3 § 4 B. subsections (1) through (5).

The examiners requested the records, as specified in the regulation, for nine (9) of the Company's producers. The Company responded in relevant part, that they have the capacity to monitor each producer's life insurance policy and annuity contract replacements through computer generated listings of all business written by each producer and further stated that the listings could then be used to calculate the specifics of subsections (1) through (5). They further stated: *The Company has not determined that such analyses have been required.*

A second request was sent to the Company for the initially requested records regarding monitoring the listed producers' replacements. After a delay of over three (3) months, the records were furnished for the examiners' review.

**(1) Agent No. 57538**

It should be noted that the Company received notice from the Vermont Department that agent's license (VT license # 57538) had been suspended as a result of an investigation, which revealed violations of Vermont's Replacement Regulation I-2001-3 and misrepresentations (violations of 8 V.S.A. § 4804 (a) (9) ). This agent's name (VT license # 57538) was included on the listing of the nine (9) producers as discussed above. The examiners inquired as to why the company failed to monitor this agent's replacement activity, especially in the light of his suspension based on violations of the replacement regulation. The Company's response follows:

*The agent entered into the Stipulation freely and voluntarily and understood all terms and conditions of the Stipulation. The agent agreed to be fully bound by its terms and conditions.*

Additionally, the review of this agent's replacement records revealed that in the year 2003, the agent's business consisted of 33.3% annuity replacements and in the year 2004, 25% were annuity replacements.

Further, an irregularity was observed with respect to policy number 0S5059989, which was written by this same agent. The application's replacement question was marked **no** however; the telephone interview with the applicant (a Company requirement with respect to life insurance policies) indicates that the applicant answered **yes** when asked the replacement question. The examiners inquired as to why the policy was not treated as a replacement. The Company responded that the agent was contacted and confirmed that the transaction was not a replacement, that the applicant was adding to current coverage and not replacing existing coverage. The Company's failure to require that a replacement notice be completed and furnished to the applicant, is a violation of Regulation 2001-3 § 5 A. (1) in that the applicant did have existing coverage and should have been furnished the required notice.

**(G) 2001-3 § 4 D. & 2001-3 § 3 B.**

The Company failed in twenty-five (25) cases to require a notice regarding replacements in the form prescribed by the regulation (Reference 2001-3 – Appendix A), resulting in violations of 2001-3 § 4 D.

Additionally, the Company's failure to inform its producers of the requirements of Regulation I-2001-3 (as previously discussed in sub-section I (A) of this report) resulted in twenty-five (25) violations of Regulation 2001-3 § 3 B., which requires the writing producer to present to the applicant a notice regarding replacements in the form as described in Appendix A (or other similar form approved by the Commissioner) and that

the notice; *shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud.*

**(H) 2001-3 § 5 A. (2)**

The Company failed in fifteen (15) cases, where a replacement was involved, to notify the existing insurer, affected by the proposed replacement, within the required five (5) business days time limit, violations of Regulation 2001-3 § 5 A. (2).

**(I) 2001-3 § 4 B. (5)**

The Company failed in five (5) cases, where a replacement was involved, to properly record the replacement in its replacement register, representing violations of Regulation 2001-3 § 4 B. (5).

**(J) 2001-3 § 6 A. & B.**

**Reference: 0A5073250**

The Company reported that **no** notices (replacement) were received from other companies during the examination period. However, it was observed that the Company did receive a notice from another insurer (11-04) with respect to the referenced annuity. The Company is in violation of Regulation 2001-3 § 6 A. in that they failed to produce *all replacement notices received, indexed by replacing insurer* . . . . .

Additionally, the Company's conservation letter dated 12-16-04, failed to specifically inform the contract owner of her *right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary* . . . , in accordance with 2001-3 § 6 B.

**(K) 2001-3 § 8 A. (2)**

The examiners observed five (5) cases in which the replacement question on the application was left unanswered. These instances represent violations of Vermont's Insurance Trade Practices Act, 8 V.S.A. § 4724. Regulation 2001-3 § 8 A. (2) provides guidance as to examples of violations of the Act as follows:

*Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;*

The instances described above are contrary to the *Purpose and Scope* section of the replacement regulation, (2001-3 § 1 A. (2) (b)) which, lists the following for the purpose of the regulation:

*Reduce the opportunity for misrepresentation and incomplete disclosure.* (Emphasis added)

## **(L) INCOMPLETE/INCORRECT APPLICATIONS**

Additional irregularities were noted with respect to the completion of applications and replacement notices, as discussed below.

### **0A5074934**

The agent's replacement question was answered *no* indicating that the sale was not replacement when, in fact, it was.

### **0A5081508**

The agent's replacement question was answered *yes* although the sale was not a replacement of an existing life insurance policy or annuity contract.

### **0A5073250**

Questions 1 and 2 on the replacement notice were unanswered and the space for specifying the reason for the replacement was left blank.

### **0S5090349, 0S5090364 & 0S5090365**

The agent's replacement question was not answered.

### **0A5074934**

The replacement question on the application was answered *yes* however; the agent's replacement question was answered *no*.

## **(M) CERTIFICATE OF ACCEPTANCE**

One of the Company's products offered to Vermont consumers is Medicare Supplement Insurance. The application for the Medicare Supplement policy includes a supplemental form entitled (*Supplement to Application MS-APP-APR (2/02) VT*), which is an application for life insurance.

During the course of the examination, the examiners observed an additional form, with respect to the Medicare Supplement policy, entitled: *Certificate of Acceptance*. The *Certificate of Acceptance* offers life insurance on a guaranteed issue basis in amounts of \$ 2,500 to \$9,000. The referenced form is mailed to all applicants who have been issued a Medicare Supplement policy regardless of whether the *Supplement to Application* was completed.

The problems observed, as they relate to Vermont's replacement regulation, are:

- The *Supplement to Application* form only contains the following question: *Is any insurance applied for intended to replace any insurance or annuities currently in force?* The Company failed in every case, where a Medicare Supplement policy was issued, to comply with the requirements of Regulation 2001-3 § 4 C. which states: *Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;*
- Additionally, in the absence of a completed *Supplement to Application* form, it is not known whether by reason of the transaction, a replacement, as defined by Regulation 2001-3 § 2 J., has occurred.

The *Certificate of Acceptance* form includes the following language:

*The coverage I wish issued on my life is checked below:*

*I choose the following persons as my designated beneficiary(ies):*

*I hereby request that American Progressive Life & Health Insurance Company of New York issue a life insurance policy on the Senior Security I level death benefit plan.*

*I agree that this policy is to be issued upon the application and medical information executed in conjunction with Medicare Supplement policy———. Such application shall become a part of this life insurance policy.*

The *Certificate of Acceptance* form, for all intents and purposes, serves as an application for life insurance and as such should have been filed with and approved by the Commissioner, pursuant to 8 V.S.A. § 3541.

The examiners recommend that the Company revise its *Supplement to Application* form and *Certificate of Acceptance* form to include the appropriate question with respect to existing policies or contracts in accordance with 2001-3 § 4 C. It is further recommended that the Company seek approval of its *Certificate of Acceptance* form from the Vermont Department per 8 V.S.A § 3541.

In responding to the examiners' criticism and recommendation, the Company stated that they would re-file the *Supplement to Application* form, including the appropriate question and seek approval of the *Certificate of Acceptance* form.

**See Appendix I (Replacements)**

## **(N) SUMMARY AND RECOMMENDATIONS**

Although Vermont's replacement regulation became effective March 1, 2002, the Company failed to introduce the required *Important Notice: Replacement of Life Insurance or Annuities* in the form prescribed by Regulation 2001-3-Appendix A, until August 29, 2005. Further, the Company did not revise its applications to include the required statement regarding whether the applicant has existing policies or contracts, pursuant to Regulation 2001-3 § 4 C., until March 10, 2006 (date the revised applications were filed with the Department).

The Company reported to the examiners in June 2006, that they decided to no longer accept life and annuity replacements effective March 1, 2006, in all states except New York and Pennsylvania. In the event the Company reverts to accepting replacement business the examiners recommend the following:

- That the Company inform its producers of the requirements of Vermont's Regulation 2001-3 and incorporate the requirements of the regulation into all relevant producer training manuals.
- That the Company take steps, which would ensure that the existing company is notified within the required five (5) business days in accordance with Regulation 2001-3 § 5 A.
- That the Company implement procedures which would ensure that all replacements are properly and accurately recorded in its replacement register.

Additionally, the examiners suggest the following:

- It is recommended that the Company furnish notification and full disclosure to each of the affected policy/contract holders that their rights under Vermont's replacement regulation may not have been provided. The notices should address the specific regulation, i.e. failure to furnish the appropriate "Important Notice: Replacement of Life Insurance or Annuities", failure to provide notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid, etc.
- The examiners recommend that the Company implement procedures in order to ensure that all applications are reviewed for proper completion and accuracy.

## **(II) TRADE PRACTICES**

### **(A) SUITABILITY**

The documents the Company furnished the examiners with respect to suitability issues (reference 8 V.S.A. § 4724 (16)), consisted of, in relevant part, the following item; *Tips for Determining Suitability of Annuity Sales to Seniors*, which contains guidelines for producers regarding the proper solicitation of annuity products to seniors. The referenced document contained a statement indicating that the Company: *requires the completion and submission of the Annuity Suitability Worksheet for all annuity applications.*

The form number for the *Tips for Determining Suitability of Annuity Sales to Seniors* document is: PR-TIPS 6-04. (Introduced in June 2004)

The examiners inquired as to what procedures/requirements the Company had in place, prior to June 2004, which would ensure that unsuitable policies/contracts were not sold by its producers. The Company responded that the completion of form: *Single or Flexible Premium Deferred Annuity Disclosure*, was required to be submitted with the application. Apparently, the Company did not develop suitability worksheets prior to June 2004, in that the referenced form (*Single or Flexible Premium Deferred Annuity Disclosure*) is primarily a benefit summary for the applicant and does not address suitability issues.

The review of the Company's annuities which were issued during the examination period revealed that only three (3) annuity files contained suitability worksheets. These three (3) annuities were dated 7-15-04, 7-30-04 and 3-27-05. Thirteen (13) of the twenty (20) files that did not contain suitability worksheets were written for consumers over seventy (70) years of age.

The examiners recommend that the Company implement procedures that will ensure that suitability worksheets are completed for every annuity submitted.

### **(B) MISLEADING ADVERTISEMENT**

It was determined that the Company's brochure entitled *Tax Deferred Fixed Annuities* (Form ANN-BRO GN) contained misleading statements and illustrations as to the benefits of the referenced annuity product, representing a violation of 8 V.S.A. § 4724 (2).

The Company agreed with the examiners' criticism and added that the brochure was distributed in limited quantities and has not been in use since 2004.

### **(C) IMPROPER HIV QUESTION**

The Company employs the services of a third party administrator (CHCS Services, Inc.) to conduct telephone interviews with the applicant in order to verify that the questions on the applications are accurate. It was observed that one of the questions with respect to HIV related tests was not appropriate and was not in accordance with 8 V.S.A. § 4724 (20) (A).

The question was: *tested positive for Human Immuno Deficiency Virus (HIV)?* The statute provides that: *No person shall request or require that a person reveal having taken HIV-related tests in the past.*

The Company agreed with the examiners' criticism stating that they will have the *Instant Senior Security Interview* form, revised to read:

*Have you ever had or been treated for Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex?*

**See Appendix II (Trade Practices)**

### **(III) COMPLAINTS**

#### **(A) MAINTENANCE OF COMPLAINT RECORDS**

Vermont's Regulation 76-1 § 5 requires insurers to submit to the Department, annually, a summary sheet of its complaint records in the format prescribed by the referenced regulation and in accordance with Exhibit 3.

The Company failed to furnish the required annual reports to the Department for the years 2002 through 2005, in violation of Regulation 76-1 § 5.

Upon receipt of the examiners' criticism, the Company undertook corrective action on May 25, 2006, by furnishing copies of the required annual reports and stated that: *We have documented our files to include the required Annual Report pursuant to Regulation 76-1 § 5.*

#### **(B) UNTIMELY RESPONSE TO THE DEPARTMENT**

##### **Policy # 045051491 (VT file # 20062875)**

The Vermont Department requested information from the Company with respect to a complaint filed by the policyholder on February 23, 2006. A second request was sent on April 3, 2006. The Company responded to the state's inquiry on April 14, 2006, far beyond the fifteen (15) working days time limit, in violation of Regulation 79-2 § 5 C.

The examiners recommend that the Company initiate procedures which would ensure that all inquiries /requests from the Vermont Department are addressed in a timely manner.

#### **(C) NUMBERS OF COMPLAINTS RECEIVED**

The Company reported that a total of eleven (11) complaints were received from January 1, 2002 through May 8, 2006, as detailed in the table that follows. All the complaints were received from the Vermont Department.

The examiners observed that six (6) of the eleven (11) complaints involved cases where the complainant had experienced delays in receiving their refunds after requesting cancellation through the Company's Senior Health Service Center in Pensacola, FL. The Company avers that their review of the complaints regarding refund delays did not detect an emerging pattern within the Company's operations.

### Complaints Received by the VT Department

<b>Year</b>	<b>Number of Complaints Received</b>
2002	3
2003	5
2004	2
2005	0
2006 (1-1-06 to 5-8-06)	1

#### **(IV) REPORTS OF LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS**

Vermont Department Bulletin 30 requires insurance companies to report, on an annual basis, actions by the insurance department of any other state against the insurance company or by the insurance company against the insurance department of any other state, which involves any allegation of violation of law or regulation as described in the Bulletin.

The Company failed to file the required notice for the years 2003 through 2005 with the Vermont Department representing noncompliance with Bulletin 30. Additionally, the Company failed to file the notice for the year 2002 until July 12, 2005.

The Company acknowledged that the filings per Vermont Bulletin 30 were not filed for the years 2003 through 2005 and undertook corrective action by submitting the required filings during the examination.

## (V) FINES & PENALTIES

The following fines and penalties were imposed on the Company during the examination period as detailed below.

### Year 2002

<b>Date</b>	<b>State</b>	<b>Explanation</b>	<b>Fine Amount</b>
11-14-2002	NJ	Failed to file report in a timely manner	\$750.00
8-30-2002-	NY	Examination report findings	\$10,000
3-13-2022	CT	Consent Order from CT states in relevant part: <i>During the approximate period September 2001-January 2002 it was determined that Respondents failed to establish practices and procedures to properly monitor and supervise their marketing activities and sales force, and failed to establish practices and procedures to ensure compliance with statutory licensing requirements, resulting in producers soliciting, negotiating or effecting coverage on Respondent's behalf without an appointment and/or license in the State of Connecticut.</i>	\$75,000

**Year 2003**

<b>Date</b>	<b>State</b>	<b>Explanation</b>	<b>Fine Amount</b>
11-7-2003	AR	2003 Delinquent filing of Annual "Company Financial Regulatory Fee"	\$500

**Year 2004**

<b>Date</b>	<b>State</b>	<b>Explanation</b>	<b>Fine Amount</b>
9-1-2004	AR	Late filing fees	\$1,6000

**Year 2005**

No fines or penalties were reported
-------------------------------------

## SUMMARY OF RECOMMENDATIONS

1.

### Page 13

The examiners recommend that the Company revise its *Supplement to Application* form and *Certificate of Acceptance* to include the appropriate question with respect to existing policies or contracts in accordance with 2001-3 § 4 C. It is further recommended that the Company seek approval of its *Certificate of Acceptance* form from the Vermont Department pursuant to 8 V.S.A § 3541.

2.

### Page 14

In the event the Company reverts to accepting replacement business the examiners recommend the following:

- That the Company inform its producers of the requirements of Vermont's Regulation 2001-3 and incorporate the requirements of the regulation into all relevant producer training manuals.
- That the Company take steps, which would ensure that the existing company is notified within the required five (5) business days in accordance with Regulation 2001-3 § 5 A.
- That the Company implement procedures which would ensure that all replacements are properly and accurately recorded in its replacement register.

3.

### Page 14

The examiners recommend that the Company furnish notification and full disclosure to each of the affected policy/contract holders that their rights under Vermont's replacement regulation may not have been provided. The notices should address the specific regulation, i.e. failure to furnish the appropriate "Important Notice: Replacement of Life Insurance or Annuities", failure to provide notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid, etc.

4.

### Page 14

It is recommended that the Company implement procedures in order to ensure that all applications are reviewed for proper completion and accuracy.

**5.**

**Page 15**

The examiners recommend that the Company implement procedures that would ensure that suitability worksheets are completed for every annuity submitted.

**6.**

**Page 17**

It is recommended that the Company initiate procedures which would ensure that all inquiries/requests from the Vermont Department are addressed in a timely manner.

**APPENDIX I**  
**(REPLACEMENTS)**

**(G) 2001-3 § 4 D. & 2001-3 § 3 B.**

0A5073820  
0A5074934  
0A5074935  
0A5073250  
0S5076805  
0S5076976  
0S5077071  
0S5078589  
0S5078937  
0S5078938  
0S5081236  
0S5085702  
0S5087318  
0S5088676  
0S5088681  
0S5093513  
0S5093514  
0S5103163  
0S5103737  
0S5103739  
0S5086496  
0S5093435  
0S5072880  
0S5078590  
0S5072878

**(H) 2001-3 § 5 A. (2)**

0S5072878  
0S5076805  
0S5077071  
0S5078589  
0S5078937  
0S5078938  
0S5088676  
0S5088681  
0S5103163  
0S5086496  
0S5072880  
0S5078590  
0S5076155  
0S5076039  
0A5073820

**(I) 2001-3 § 4 B. (5)**

0S5076805  
0S5077071  
0S5103163  
0S5072878  
0A5073820

**(K) 2001-3 § 8 A. (2)**

0S5103174  
0S5076155  
0S5076039  
0A5066625  
0A5079404

**(M) CERTIFICATE OF ACCEPTANCE**

The following policies contained completed certificates of acceptance, without completion of the supplement to application.

0S5093472	0S5097277
0S5101833	0S5097161
0S5087849	

## **APPENDIX II**

### **(TRADE PRACTICES)**

#### **(A) SUITABILITY**

Annuities that did contain suitability worksheets:

0A5089982

0A5089897

0A5102510